

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Partha Sarathi Sen

FAT No. 239 of 2023

Saibal Sarkar
-vs-
XXXXXX

For the appellant : Mr. Supratick Syamal,
Ms. Somosreedebi Dutta,
Mr. Mahaboob Ahmed

Heard on : December 11, 2024.
Judgment on : December 11, 2024.

Partha Sarathi Sen, J.:

1. Challenge in this appeal is against the Order No. 15 dated 05.05.2022 as passed by the learned District Delegate, Baruipur in Miscellaneous Probate Case No. 15 of 2021, whereby and whereunder the said court rejected the appellant/petitioner's application under Section 276 of the

Indian Succession Act, 1925 (hereinafter referred to as “the said Act”) for grant of probate to the last Will and Testament of the deceased Mukulika Mitra.

2. We have heard learned Advocate for the appellant. We have also perused the order (deemed decree), which is impugned before us.
3. On perusal of the entire materials as placed before us, it reveals that the appellant, being the executor to the last Will and Testament of the deceased Mukulika Mitra, approached the said court of the learned District Delegate, Baruipur, with a prayer for grant of probate by filing an application under Section 276 of the said Act.
4. It appears that after completion of the formalities of service of notice of citation upon the interested parties having caveatable interest, the said case was taken up for final hearing.
5. The present appellant, being the executor to the said Will and Testament, tendered himself as PW 1 and in course of examination-in-chief, he duly proved the death certificate of the deceased and adduced evidence that the deceased, that is, the testatrix prior to her death executed her last Will and Testament for which probate has been sought for. It further

appears to us that one of the attesting witnesses, namely, Debasis Roy Chowdhury, also deposed as PW 2 and in course of his examination-in-chief he duly proved the Will-in-question, the signature of the testatrix and the signatures of the attesting witnesses, including the signature as put by him in the said will as an attesting witness.

6. It appears to us that the learned District Delegate while passing the impugned order (deemed decree) duly appreciated the evidence as adduced by the PW 1 and PW 2 as well as the documentary evidence. The said Court noted that the consenting parties, namely, Tripti Sarkar and Pradip Mitra alias Pradip Kumar Mitra, while receiving the notice of citation have given their due consent for the grant of the probate as prayed for.
7. The learned trial court however while passing the impugned order (deemed decree) found that notice of citation was not served upon the beneficiary of the Will, which ought to have been done under Section 283(1)(c) of the said Act which according to the learned District Delegate is an incurable defect affecting the merit of the petition seeking probate. The learned District Delegate also came to a finding that the Part II

of the schedule 'A' though speaks about the details of the movable assets of the deceased of the application for probate but the same found no place in the Will-in-question.

8. In course of his submission, learned Advocate for the appellant submits before this Court that while passing the impugned order (deemed decree), learned District Delegate has failed to visualize the true spirit of the said Act.
9. It is contended that it is the duty of the learned District Delegate to ensure that notice of citation has been served upon the persons claiming to have any interest in the estate of the deceased and there is no requirement to serve notice of citation upon the beneficiary especially when the named executor to the Will is seeking probate basically for the benefit of the beneficiary.
10. Learned Advocate appearing on behalf of the appellant further submits that the learned District Delegate ought not to have gone into the wordings of the Will in absence of any doubt with regard to the execution of the Will.
11. After careful consideration of the entire materials as placed before us, we notice that after filing of the aforementioned case for probate, notice of citation has already been served

upon the near relations of the testatrix and on receipt of the same they have given their due consent, which has been recorded by the learned trial court.

12. We find further that the Will-in-question has been duly proved by one of the attesting witnesses. No case has been made out from any corner that the execution of the Will has been done in such a manner which raises a shadow of doubt with regard to the genuineness of the Will-in-question or with regard to the testamentary capacity of the testatrix. Within the four-corners of the said Act, we find no provision for giving notice of citation of a grant of probate upon a beneficiary, which in our considered view, the learned trial Court has misconstrued and has failed to visualize in its proper perspective.

13. In our further considered view, when the execution of the Will is not under challenge by anybody and especially when no materials have been placed before the learned District Delegate regarding any shadow of doubt with regard to the execution of the Will and/or with regard to the testamentary capacity of the testatrix at the time of execution of the will, the

learned District Delegate has committed serious error of law and of fact not allowing the application for probate.

14. So far as the finding of the learned trial Court regarding the alleged absence of the moveable property, as disclosed in the Part-II of the schedule of the application for probate, in the Will-in-question, we find that the reason assigned by the learned District Delegate is faulty in view of the fact that in the last paragraph of page no. 4 of the Will in question it has been expressed by the testatrix that even after execution of the Will if she acquires any property and/or future asset the same would come under the purview of the Will and the same would also devolve upon the beneficiary of the Will for which probate has been sought for.

15. We thus find no reason for rejecting the prayer for grant of probate.

16. Accordingly, the instant appeal is allowed.

17. Consequentially, the Order No. 15 dated 05.05.2022 as passed in Miscellaneous Probate Case No. 15 of 2021 by the learned District Delegate, Baruipur, is hereby set aside.

18. Consequentially, the application under Section 276 of the said Act as filed by the present appellant before the learned

District Delegate, Barupur, in Miscellaneous Probate Case No. 15 of 2021 stands hereby allowed.

19. The learned District Delegate, Baruipur is hereby directed to grant probate to the present appellant/petitioner on furnishing requisite amount of court-fees.
20. With the disposal of the instant appeal, CAN 1 of 2023 is also disposed of.
21. No formal decree need be drawn up.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Partha Sarathi Sen, J.)